IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO : 13365 of 2004

Between:

Sagam Anji Reddy, S/o. Pitchi Reddy, Hindu,
R/o. Nakarikallu (P) & Mandal, Narsaraopeta M.M.C., Guntur District.

..... PETITIONER

AND

1 Dheekonda Ramadasu, S/o. Kotayya, R/o. Nakarikallu Post & Mandal,

Narasaraopeta M.M.C., Guntur District.
2 Election Officer, Nakarikallu Gram Panchayat,
Nakarikallu Z.P. High School, Piduguralla Post, Guntur District. A.P.,
3 Election Officer, Nakarikallu Gram Panchayat,
Nakarikallu (Sri T. Kumar Swamy, Hindi Pandit, Z.P. High School,
Peda Kakani Post, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of Writ of CERTIORARI to call for the records relating to the order dated 20-7-2004 passed in Election O.P.No.7/2001 on the file of the Election Tribunal-cum-Principal Junior Civil Judge Court Narsaraopet and quash the same.

Counsel for the Petitioner: MR.E.AYYAPU REDDY

Counsel for the Respondent No.1: MR.O.Manohar Reddy

Counsel for respondent Nos.2 and 3 : Mr.Srinivas Dammalapati

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13365 OF 2004

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ORDER:

The petitioner assails the order of the Election Tribunal-cum-Principal Junior Civil Judge, Narasaraopet in election O.P.No.7 of 2001 dated 20.07.2004 and prays this Court to quash the same by issuing a writ of certiorari. The petitioner was elected Sarpanch of Nakarikallu Gram Panchayat on 20.08.2001. The election was challenged by the first respondent, the defeated candidate, before the Election Tribunal praying to direct the respondents 2 and 3 for recounting of the votes polled for the office of the sarpanch and for a declaration that the petitioner herein is not duly elected as sarpanch of the village. The petitioner filed counter opposing the election petition, *inter alia*, contending that the first respondent did not give any valid reasons for ordering recount, that the petition is vague and therefore the prayer for recounting cannot be entertained. The parties lead their evidence and marked the documents. The learned Tribunal, by impugned order allowed election O.P., and while holding that it is not possible to recount the votes having regard to the missing bundle of votes, declared that the petitioner is not duly elected sarpanch of Nakarikallu Gram Panchayat. The Election Tribunal further directed election authority to conduct fresh elections for the office of the sarpanch.

The first respondent filed a counter affidavit opposing the writ petition. He admits that he filed election petition seeking a direction to the respondents for recounting the votes for the post of sarpanch and for a declaration that the petitioner herein is not a duly elected Sarpanch of Nakarikallu Gram Panchayat. He also alleged that there was discrepancy at the time of counting of votes, that he filed a representation for recounting of the votes, that there was an attempt for recounting of the votes, which was not proceeded with as respondents 2 and 3 found a bundle of fifty votes is missing. He also asserts that on the representation given for recounting, the second respondent endorsed to take up recounting and even thereafter the petitioner was declared elected illegally. While denying the allegation that he did not give material

particulars, he contends that he has given sufficient reasons asking for such recounting.

The learned counsel for the petitioner, Sri E.Ayyapu Reddy, submits that the allegation made by the first respondent that the third respondent accepted application for recounting and that recounting could not take place, as there was a missing bundle of fifty votes is not correct. He would urge that if the election officer orders recounting, the provisions of Rule 35(3) of the A.P.Panchayat Raj (Conduct of Elections) Rules, 1994 (for short, the Election Rules) have to be strictly complied with and the order should be passed giving reasons for ordering such recounting. In the absence of such order giving reasons, it was not proper to assume in favour of the first respondent. He further submits that a candidate cannot seek recounting of polled votes as a matter of course or as a matter of right. In the application given by the first respondent after the declaration of results, i.e.Ex.A.5, the first respondent has not given any reasons except saying that there is suspicion of irregularity in counting and therefore recounting cannot be ordered. According to the learned counsel either in the election petition before the learned Tribunal or in the counter filed in this writ petition, the first respondent has not disclosed any reasons justifying such recounting. Lastly, he would urge that the first respondent was set up by the local M.L.A., who manipulated and made the first respondent to come forward with unfounded plea of missing bundle of fifty votes. He would therefore urge that unless and until the first respondent makes out a case for recounting, the consequential relief prayed by him in the election petition could not be granted. He placed strong reliance on the decisions of the Supreme Court in **V.S.Achuthanandan v P.J.Francis, Mahendra Pal v Ram Dass Malanger and Mahender Pratap v Krishan Pal** in support of the contention that recounting cannot be ordered as a matter of course and that after the declaration of results even if it is found that some polling material is missing, it is of no consequence, in so far as the candidate, who is declared elected.

The learned counsel for the first respondent Sri O.Manohar Reddy submits that having regard to the settled principles of judicial review of the orders passed by the Election Tribunals, the petitioner has not made out any case and that even if the two views are possible on the material available on record, this Court may not be inclined to interfere with the finding recorded by the learned Tribunal. He would urge that respondent 3 violated Rule 35 of the Election Rules and when the entire election petition was based on such a ground, it was proper for the Election Tribunal to conclude that the election of the petitioner is not valid. It is his submission that his application for recounting was duly accepted by the third respondent and when the recounting was taken up, it was found that a bundle of fifty votes is missing and therefore the recounting was stopped and the result was declared illegally.

In the background facts and in view of rival contentions, the only point that arises for consideration is whether the learned Election Tribunal-cum-Principal Junior Civil Judge, Narasaraopet was justified in declaring that the petitioner herein is not duly elected Sarpanch of Nakarikallu Gram Panchayat and directing the District Election Authority to conduct fresh election for the purpose of Sarpanch of the village?

At the outset, having regard to the submission of the learned counsel for the first respondent that in exercise of power of judicial review, this Court may not interfere with finding of facts and also may not take a possible different view from that of the Tribunal even if such second view is possible, some general observations may be necessary. In India, the power of judicial review conferred on Supreme Court and the High Courts forms basic structure of the Constitution of India. There are many types of situations, where judicial review is permissible in India. Judicial review of constitutional amendments, judicial review of the law enacted by the Parliament as well as State Legislatures, the judicial review of judicial decisions, judicial review of the decisions of the statutory tribunals, judicial review of quasi judicial decisions and judicial review of administrative/executive action are the main types. The scope of judicial review in different situations will be different. A Division Bench of this Court, to which I was a member, in **A.Ratnam and others v Government of Andhra Pradesh** considered the scope of judicial review of decisions of statutory tribunals. After referring to the decisions of the Supreme Court in **Syed Yakoob v Radhakrishnan Jagdish Prasad v Angoori Devi** and **L.Chandra Kumar v Union of India**, this Court elucidated the following principles of judicial review of the decisions of the tribunals.

i. The High Court is not an appellate authority over the decision of the Administrative Tribunals;

ii. While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;

iii. The petition for a judicial review would lie only on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however grave it may appear;

iv. When the Tribunal renders a decision after determining the facts, no application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however grave it may appear, unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error of law in the sense that admissible evidence was rejected and inadmissible evidence was relied on;

v. The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;

vi. When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the binding principle has been appropriately applied or not; the Tribunal's decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;

vii. Whether or not an error of law apparent on the face of the record must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened;

viii. The three parameters of judicial review of administrative action – illegality, irrationality and procedural impropriety with necessary changes are equally applicable to cases of judicial review of the Tribunal's decision; and

ix. A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 227; the supervisory jurisdiction conferred on High Court is limited to seeing the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

It is therefore well settled that a decision of a tribunal, which suffers from grave error apparent on the face of records or illegality can be interfered with by this Court. When a tribunal understood the facts of the case but applied law wrongly or when a tribunal came to a conclusion wrongly on the questions of fact based on no evidence and applies law or applies law wrongly, such a decision is said to be vitiated by misdirection in law. A misdirection in law is a grave error, which requires correction by Court of judicial review. Keeping these principles in view, the point for consideration is to be appreciated.

In this case, the first respondent filed the election petition mainly for recounting of the votes polled on 20.08.2001 and alternatively he also sought a declaration that the petitioner is not duly elected. Except alleging that a bundle of fifty votes was missing, which allegedly rendered the election of the petitioner invalid, no other supporting ground was pleaded nor urged by the first respondent in support of the prayer for declaration that the petitioner is not duly elected. Therefore, in the considered opinion of this Court, the election petition was essentially seeking recounting of votes. Indeed a reference to paragraph 3-A of the petition in election O.P.No.7 of 201 before the Election Tribunal would show that the entire thrust of the petition is for recounting. In such a case, the law is well settled as to the requirements and conditions to be satisfied before any candidate to election seeks recounting.

In **T.Penchalaiah v. Election Court** after referring to various decisions of the Supreme Court, this Court elaborately considered the question as to "what could be treated as material facts" for the purpose of seeking an order of recounting. On an analysis of case-law, this Court categorized such cases into four types. The first category of cases is described as those where allegations in the petition are held to be absolutely vague; second category cases are those where some details are given, but they cannot be held sufficient; and in the third category of cases, facts are given in great detail, but are held to have been made only for the purpose of satisfying the principles laid down in Court rulings and where there is no contemporaneous documentary evidence to lend credit to the correctness of these minute details. In the fourth category, where details are given in the petition were

held to be sufficient and to be truthful which are substantiated in the evidence. Dealing with first and second category of cases this Court made following observations.

> The first category of cases is the one where the allegations in the election petition are held to be *absolutely vague.* Such cases present no difficulty. To this category belong the following cases decided by the Supreme Court: ……Ram *Sewak vs. H.K.Kidwai* is a case where the allegation merely was that there had been improper rejection or acceptance of 'several' ballot papers; *Dr. Jagjit Singh vs. Giani Kartar Singh* is also a similar case; *Sumitra Devi vs. Sheo Shankar* is one where it was alleged that various irregularities related to 'several' ballot papers and 'some' bundles contained more than 50 ballot papers or less; and similarly *Ram Avtar vs. Ram Gopal* was one where the allegations were general as in the above cases. *P.K.K.Shamsuddeen vs. K.A.M.Mappilai Mohiddin* also falls in this category. …..The second category is the one where *some* details are given but were held not sufficient. …….In *Beliram vs. Jai Behari Lal* paragraph 36 of the judgment specifies that the details stated in the petition referred to mistakes in counting which occurred at Table No.5 and in the second round at Table No.8. These were held to be vague and also not substantiated on account of lack of antecedent or contemporaneous statements of the party or his agent. Similarly in *S.Narayanan vs. S.Semmalal* the (see para 10) allegation that counting was faulty in the 3rd round at tables 8, 9, 10, 13 was held to be vague.

This Court after referring to various cases falling in four categories summarized the principles as under.

> From the aforesaid rulings, the following *principles* can be summarized:- Material particulars have to be stated in the petition. What are material particulars differ from case to case, but general allegations of irregularities in counting can never furnish a ground for ordering a recount. **A half-hearted or partial statement of material particulars may not also be a reason for the Court to order a recount even though it may, in certain circumstances, be sufficient for the Returning Officer to order recount. The petition must specify the 'material' or basis on which his information is based on the record on the basis of which his counting agents have furnished him the information. The existence of any contemporaneous record of the filing of any application before the Returning Officer during the counting would lend support to the particulars stated in the petition. Mere furnishing of minute details so as to satisfy certain requirements of law as decided by the Courts cannot help unless material in support thereof is also set out in the petition. The Court must consider whether the petitioner could not have given other facts, such as polling booth numbers or the round of counting.**

(emphasis supplied)

Further, this Court also held that where some allegations are made and particulars are not specified a Tribunal would be committed serious error of law in going into

evidence when the pleadings do not satisfy the legal requirements as laid down by the Supreme Court.

First respondent in his election petition alleges that there was discrepancy at the time of counting of votes and that he raised objection before third respondent and made written representation. The written representation to second respondent was marked as Ex.A.5. In this it is alleged that there is a difference in the counting of votes. Further, as P.W.1, he deposed that on suspicion he requested for recounting. P.Ws.2 and 3 also corroborated that as there was suspicion, first respondent gave Ex.A.5 which was received by R.W.2. The pleadings, contemporaneous documents relied on would not satisfy the requirements of law as to “material facts” necessitating recounting. Mere suspicion or imaginary ground/grounds or invented grounds cannot form “material facts” and insofar as this aspect is concerned, the learned Tribunal committed grave error in proceeding on the premise that there were proper pleadings.

The elections to the office of Sarpanch are conducted in accordance with the provisions of the Act and the A.P.Panchayat Raj (Conduct of Elections) Rules, 1994. These Rules deal with notifying the elections, receiving, scrutinising and rejecting nomination papers and conducting voting, counting, recounting and declaration of results. Though these are made by delegated Legislation, these Rules form part of the Panchayat Raj Act and therefore they should be strictly interpreted, because any election law needs to be strictly interpreted. Rule 35 of the Rules deals with recounting of votes. The same reads asunder.

> **35. Recount of Votes:-** (1) After such announcement has been made under sub-rule (7) of Rule 34, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the Election Officer for recounting of the votes either wholly or in part stating the grounds on which, he demands such recount.
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> (2) On such an application being made the Election Officer shall decide the matter and may allow the application in whole or in part or may reject it wholly if it appears to him to be frivolous or unreasonable.
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> (3) Every decision of the Election Officer under sub-rule (2) shall be in writing and contain the reason therefore;
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> (4) If the Election Officer decides under sub-rule (2) to allow a recount of the votes either wholly or in part, he shall—
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> a. arrange for the recounting in accordance with Rules 32 and 34;
>
> b. amend the result sheet in Form 17 to the extent necessary after such recount; and
>
> (C) announce the amendment so made by him.
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> (5) After the total number of votes polled by each candidate has been announced under sub-rule (4), the Election Officer shall complete and sign the Result Sheet in Form 17 and no application for a further or second recount shall be entertained thereafter.

Sub-rule (7) of Rule 34 of the Election Rules requires an election officer to make entries in a result sheet in Form 17 after counting of all ballot papers contained in all the ballot boxes used in the Gram Panchayat and announce the particulars. After such announcement, under rule 35(1) of the Election Rules, any candidate or his election agent may apply in writing to the election officer for recounting of the votes either wholly or in part stating the grounds on which, such recounting is demanded. Sub-rule (2) read with sub-rule (3) of Rule 35 of the Election Rules requires an election officer to decide the matter and pass an order in writing containing reasons either for allowing or rejecting application for recounting. If election officer decides under sub-rule (2) of Rule 35 of the Election Rules to allow recounting, procedure to be followed is contained in Rule 35(4) of the Election Rules. In the event of such recounting, the election officer then sign the result sheet in Form 17 and thereafter no request for recounting shall be entertained.

There are three stages to be followed by the election officer when a candidate requests recounting. The first stage is when candidate or his election agent make an application in writing giving grounds on which such recounting is demanded. In the second stage, the election officer has to consider and decide the matter, having regard to the grounds urged in the application for recounting and then has to take a decision either allowing the application or rejecting the application by passing an order in writing. In the third stage, recounting is taken up. These three stages are inseparable and mere existence of situation at either of the stages would not be sufficient. All the three stages must be scrupulously adhered to.

The first respondent made an application on 20.08.2001 to R.W.2 (election officer) requesting recounting on the ground that there are certain discrepancies at the time of counting of votes. He did not state any grounds on which he demanded recounting except stating that there is discrepancy. Be that as it is, no order is passed by R.W.2 as required under sub-rule (2) read with sub-rule (3) of Rule 35 of the Election Rules and no such document has been exhibited by the first respondent to that effect. Therefore, the case of the first respondent that his request was accepted by making an endorsement of Ex.A.1 and recounting was stopped, when some votes were found missing, cannot be accepted. The first respondent also did not take any steps to summons the third respondent, who allegedly gave a complaint to station house officer, Nekarikallu about missing votes nor any attempt is made to explain as to why the alleged recounting was not preceded by an order in writing accepting the application for recounting, which is mandatory. In the absence of any such valid order, the case of the first respondent cannot be believed nor can it be said that the requirements of law for recounting of votes have been duly complied with. On this score also, it must be held that the trial Court committed grave error in coming to the conclusion that the first respondent made out a case for recounting. In these circumstances, as rightly contended by the learned counsel for the petitioner, the allegation of missing votes itself cannot be a ground for ordering recounting and in this case unless the first respondent makes out a for recounting as per settled

principles of law, it cannot be assumed that the election of the petitioner is invalid.

I have perused the evidence of the witness examined on behalf of the first respondent and none of them have spoken about any valid grounds for seeking recounting except stating that due to suspicion, R.W.1 (first respondent) sought for recounting.

In **Mahendra Pal v. Ram Dass Malanger** the Supreme Court reiterated that recounting of votes cannot be ordered merely on the ground discrepancy in the number of votes found and the number of ballot boxes issued. In **Mahender Pratap v. Krishan Pal** the Supreme Court held that when once the results are declared, no application for recount can be made. In the case before this Court, there is no clear finding recorded by the Tribunal that first respondent made an application for recounting before declaration of results at the time of entering the result of counting in Form-XVII.

The Supreme Court in a recent judgment in **Chinnasamy v K.C.Palanisamy**, considered the circumstances, under which an order for recounting of votes can be passed. The Court held that such an order can be passed i) if there is *prima facie* case; ii) material facts thereof are pleaded; iii) the order for recounting shall not be issued by way roving or fishing inquiry; and iv) an objection has been taken to recourse to. In proving this, a candidate has to plead material facts as required under law and in the absence of any such material facts, any amount of evidence cannot be looked into. It was held as under.

> …Apart from the clear legal position as laid down in several decisions, as noticed hereinbefore, there cannot be any doubt or dispute that only because a re-counting has been directed, it would not be held to be sacrosanct to the effect that although in a given case the court may find such evidence to be at variance with the pleadings, the same must be taken into consideration. It is now well-settled principle of law that evidence adduced beyond the pleadings would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. The court at a later stage of the trial as also the appellate court having regard to the rule of pleadings would be entitled to reject the evidence wherefor there does not exist any pleading.

In this case, the learned tribunal merely relied on some evidence produced on behalf of the first respondent, though there was no contemporaneous document and proper pleadings in the election petition filed by the first respondent. Therefore, it must be held that the impugned order of the election tribunal suffers from illegality and the same is liable to be quashed.

In the result, the impugned order of the election tribunal-cum-Principal Junior Civil Judge, Narasaraopet is quashed and the Writ Petition is allowed. There shall be no order as to costs.

(V.V.S.RAO,J)

30.11.2004.

pln/bnr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the thirtieth day of November Two thousand and four.

To

1. The Election Officer, Nakarikallu Gram Panchayat, Nakarikallu Z.P.High School, Piduguralla Post, Guntur District, A.P.
2. The Election Officer, Nakarikallu Gram Panchayat, Nakarikallu (Sri T.Kumar Swamy, Hindi Pandit, Z.P.High School, Pedakakani Post), Guntur District.
3. The Election Tribunal-cum-Principal Junior Civil Judge, Narasaraopet, Guntur District.
4. 2 CD copies.